

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ORDER

Pursuant to 28 U.S.C. § 636(b), the Court referred all pretrial matters in this case to United States Magistrate Judge Frederick R. Buckles for determination and recommended disposition, where appropriate. On January 30, 2009, Judge Buckles entered an Order and Recommendation with respect to the motions filed by defendant James Harold Ellegood. On February 9, 2009, the defendant filed an objection to the Order and Recommendation, and requested a hearing.

Pursuant to 28 U.S.C. § 636(b)(1), the Court is required to make a *de novo* determination of the specified proposed findings and recommendations to which objection is made. Here, the defendant makes only general, non-specific objections. He does not identify any error in the factual findings made by the magistrate judge or in the application of the law to the facts.

Nevertheless, having reviewed the evidence presented during the suppression hearing, the Court finds that the defendant was

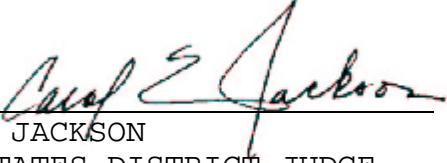
not in custody at the time he made the statements that the government intends to present at trial. The statements were made during the search of the defendant's residence. The defendant was told that he was free to leave while the search was being conducted, but he chose to stay. He was not handcuffed nor were his movements restrained in any way. Additionally, the evidence establishes that the defendant's statements did not result from questioning by the law enforcement officers or from conduct designed to elicit a statement. Because the defendant was neither in custody nor interrogated, there was no requirement that the Miranda warnings be given to him. Miranda v. Arizona, 384 U.S. 436, 478-79 (1966). See Berkemer v. McCarthy, 468 U.S. 420, 440 (1984); Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980).

The evidence further establishes that the defendant's statements were not the product of promises, threats or coercion. In fact, the statements were made by the defendant in conversation with his wife and in casual conversation with one of the agents. Thus, the Court concludes that the statements were made voluntarily.

Accordingly,

IT IS HEREBY ORDERED that the Order and Recommendation of United States Magistrate Judge Frederick R. Buckles is sustained, adopted, and incorporated herein.

IT IS FURTHER ORDERED that the motions of defendant James Harold Ellegood to suppress statement [Doc. # 68] and for a bill of particulars [Doc. # 70] and the defendant's request for a hearing are **denied**.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 19th day of February, 2009.